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April 25, 2022

*VIA EMAIL: rule-comments@sec.gov*

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File Nos. S7-01-22; S7-03-22

Dear Secretary Countryman:

The Alternative and Direct Investment Securities Association (ADISA),[1] is writing to express concerns with the slate of new rules and other requirements the SEC is proposing under the Investment Advisers Act of 1940 (the "Advisers Act").[2] At the heart of the Proposal is a set of new and/or enhanced requirements applicable to investment advisers that manage or advise "private funds" that would, if adopted:

- obligate advisers to provide additional information to investors regarding the cost of investing in private funds and the performance of said funds;
- require registered advisers to obtain annual financial statement audits for each private fund they advise and, in connection with an adviser-led secondary transaction, a fairness opinion from an independent opinion provider;
- prohibit all private fund advisers, including those that are not registered with the Commission, from engaging in certain sales practices, conflicts of interest, and compensation schemes;

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[1]ADISA is the largest association of the retail direct investment industry in the United States. ADISA has approximately 4,500 members who employ over 220,000 investment professionals, together serving the interests of more than 2 million investors throughout the country. Direct and alternative investment programs serve a critical need in the creation and ongoing management of diversified investment portfolios.

[2] Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, 87 FR 16886 (March 24, 2022) (referred to herein as the "Adviser Proposal"); Amendments to Form PF To Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers." 87 Fed. Reg. 9106 (Feb. 17, 2022) (the "Form PF Proposal" and, together, the "Proposal").

- prohibit all private fund advisers from providing preferential treatment to certain investors in a private fund, unless the adviser discloses such treatment to other current and prospective investors; and
- expand the type and amount of information that advisers must report and when reports must be made on Form(s) PF.[3]

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ADISA members are active in the marketing and distribution of securities to qualified investors through private placements. Many of the pooled investment vehicles that are privately distributed constitute "private funds" within the meaning given that term by the SEC in various regulations and forms.[4] In addition, many ADISA members are registered as "investment advisers" with the SEC under the Advisers Act, and are thus required to file Form ADV. Importantly, for purposes of this rule proposal, the advisers are required to file Form (or Forms) PF as part of said Form ADV and to update said Form(s) PF regularly, as said form or forms cover the activities of private funds managed by said advisory firms.

Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), in the wake of the 2007-08 financial crisis. The Dodd Frank Act, among other things, increased the SEC's oversight responsibility for private fund advisers and amended the Act to require advisers to private funds to register with the Commission and to require the SEC to establish reporting and recordkeeping requirements for advisers to private funds for investor protection and systemic risk purposes.[5] According to the SEC, "registration and reporting on both Form ADV and Form PF have been critical to increasing transparency and protecting investors in private funds and assessing systemic risk."

ADISA members understand the SEC's desire to both require advisers to gather and submit information about the private funds that they manage (via Form PF), and to establish certain substantive requirements applicable to their interactions with said funds. At the same time, we believe that the Proposal has some requirements to supply data to the SEC for the agency's market oversight function that are far-reaching and likely to impose a significant burden on advisers to private funds, both registered and unregistered. It is not clear that the benefits of collecting said information outweigh the burdens associated with its collection and submission. In addition, the Proposal would appear to upend the regulatory framework that Congress established in the federal securities laws that distinguishes between public and private offerings by inserting the SEC into the relationship between said advisers and the private funds they manage, on the one hand, and their investors, on the other.

Each element of the Proposal came with a lengthy list of requests for comments and suggestions, which included comments on "the potential costs and benefits of the proposed amendments and alternatives thereto, and whether the amendments … would promote efficiency, competition, and capital formation." In addition, under the Proposal, commenters were asked to provide "empirical data, estimation

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[3] The Proposal also includes amendments to the Advisers Act books and records rule.

[4] The SEC has defined as a "private fund" as "an issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940 but for section 3(c)(1) or 3(c)(7) of that Act." Captured by this definition are a variety of pooled investment vehicles that sell interests therein to accredited investors pursuant to Rule 506(b) and (c) of Regulation D under the Securities Act of 1933, as amended (the "Securities Act"), including hedge funds, liquidity funds, private equity funds, real estate funds, securitized asset funds and venture capital funds.

[5] The Dodd-Frank Act also added section 211(h) to the Advisers Act, which, among other things, directs the Commission to "facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with…investment advisers" and "promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for investment advisers."

methodologies, and other factual support for their views, in particular, on costs and benefits estimates." Despite the breadth and depth of these requests, the SEC has set very short deadlines for comments.

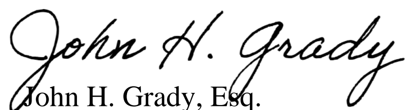
On behalf its members, ADISA submits that each element of the Proposal should be subjected to additional or supplemental (i.e., lengthier) comment periods so that a full response to the SEC's Proposal can be made. ADISA is aware that other trade associations have sought similar action from the SEC and believes that those associations have made a more-than adequate case for extending the comments period for both the Adviser Proposal as well as the Form PF Proposal.

In the event that the SEC is unwilling to extend its deadlines, ADISA believes that the Proposal should be carefully reviewed and trimmed back in a number of ways to avoid overly burdening investment advisers and inserting the SEC into the very terms under which capital providers interact with the advisers (and sponsors) of private funds. We note that the Proposal touches on multiple aspects of Form PF as currently composed, proposing changes that relate to many aspects of private fund operations and the markets in which they operate.[6] With more time, ADISA can identify which elements represent regulatory overreach or that appear to promise more burdens than benefits. In the absence of more time, however, ADISA submits that the SEC should postpone moving forward with these reporting initiatives until it can both justify the requirements and show how they will not unduly impair the ability of advisers to private funds to manager them as described in their disclosure materials.

Additionally, the SEC should not push through changes to the rules as they impact the duties of private fund advisers to their funds and investors, as such have the potential to substantially change the current investor dynamic for the worse and inhibit the ability of advisers to raised needed capital for their private funds. The SEC has an important investor protection mission, but it should not promote protection at the cost of inhibiting capital formation. Inserting itself into the dialogue between investors who are at a minimum "accredited" for purposes of Regulation D (and who may well be "qualified purchasers" or even "qualified institutional buyers"), seems unnecessary to protect these sophisticated investors which are permitted to invest in private funds without receiving the same protections offered to public funds.

ADISA asks that you give our comments consideration, and we stand ready to discuss our comments at your convenience.

Sincerely,



John H. Grady, Esq.
Co-Chair of the ADISA Legislative and Regulatory Committee

[6] Areas where the Proposal would increase reporting by advisers include *inter alia*: financial stability risks; extraordinary losses; operational events that may have serious implications for the fund, its investors, and financial stability; requests for substantial redemptions; adviser-led secondary transactions; general partner and/or limited partner clawback capture events; removal of a fund's general partner, termination of a fund's investment period, or termination of a fund; restructurings or recapitalizations of a portfolio company; investments in different class, series or type of securities (e.g., debt, equity, etc.) of a single portfolio company's capital structure; private equity fund borrowings; and reporting where a private equity fund or any of its related persons provide financing to a fund's portfolio companies.